K.S.R. 23/5. K.

1952.

File No. O. Habitual Offenders/52

Legal DEPARTMENT

A BRANCH

p. 316

K

Subject:—

Opinions under the Bombay Habitual Offenders Restriction Act, 1947.

C O N T E N T S

Legal Department file No. O, Habitual Offenders/62.

Sr. No.	R.I./O. No.	Subject	Pages.
	O. Habitual Offenders/1962.	Opinions under the Bombay Habitual Offenders Restriction Act, 1947.	
1.	2830 21/8/62.	Re. Order authorizing D.M.-- Whether addl. D.M. can exercise powers by virtue of a notification under Sec. 10(2) of Cr. P. Code--	1-2.

UR 1915

K.S.R. 1915.

JPB. 18/5/65
4 copies

OFFICE OF THE R.L.A.

Order authorising District Magistrate Whether Addl. District Magistrate can exercise powers.

Criminal Procedure Code, sec. 10(2) and Bombay Habitual Offenders Restriction Act, 1947, sec. 15(2)

Section 15(2) of the Bombay Habitual Offenders Restriction Act, 1947 provides that:

"The State Government or any officer authorized by the State Government in this behalf may in lieu of an order of restriction made against any person under this Act make an order directing such person to be placed in a Settlement established under sub-section (1) for a period not exceeding the period for which the order of restriction has been made."

Government have, under G.R.,H.D.No.3504/5,dated 24th February 1949, authorized the District Magistrates and the Commissioner of Police, Bombay, under these provisions and the question for consideration is whether an Additional District ~~Magistrate~~ Magistrate can exercise these powers by virtue of a notification under section 10(2) of the Criminal Procedure Code.

2. In Prabhulal Ramlal vs. Empr, A.I.R.1944,Nag.84 it is held that the word 'law' in 'any other law' occurring in section 10(2), Criminal Procedure Code, is not meant to include an executive order but only legislative enactments, and rules, regulation and orders which have the force of law and consequently the District Magistrate, who acts for the Provincial Government under the powers conferred upon him by the Provincial Government by an executive order, cannot be regarded as acting under any 'law' as such. Therefore, a person who is appointed as Additional District Magistrate under section 10(2), Criminal Procedure Code, cannot exercise the powers of the District Magistrate conferred upon the latter by an executive order. In view of this principle, it would not be possible for an Additional District Magistrate to exercise the powers under section 15(2) of the Bombay Habitual Offenders Restriction Act, 1947, which are conferred on the District Magistrates by a Government Order (cf. also R.L.A's opinion Nos. 6009,

dated the 23th August 1944 and 6985, dated 9th October 1944).

Id/- P. M. L.
20/2

Remembrancer of Legal Affairs.

U.R. to Home Deptt. No. 2839, dated the 21st February 1952.

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